

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3
4 SMITHKLINE BEECHAM CORPORATION,
d/b/a GLAXOSMITHKLINE, No. C 07-5702 CW
5 Plaintiff, VERDICT FORM
6 v.
7 ABBOTT LABORATORIES,
8 Defendant.

9 _____ /
10 **I. ANTITRUST CLAIMS**

11 MONOPOLIZATION CLAIM

12 A.1. Do you find that GSK has proven a validly defined economic
market?

13 Yes ____ ("Yes" is a finding for GSK.)

14 No ____ ("No" is a finding for Abbott.)

15 If you answered "Yes" to this question, then answer
Question A.2. If you answered "No" to this question, proceed
to Question B.1.

16 A.2. Do you find that GSK has proved that Abbott had monopoly
power in the relevant market?

17 Yes ____ ("Yes" is a finding for GSK.)

18 No ____ ("No" is a finding for Abbott.)

19 Whether you answered "Yes" or "No" to this question, answer
Question A.3.

20 A.3. Do you find that GSK has proved that Abbott engaged in the
following types of anticompetitive conduct:

21 A.3.a. a practical refusal to deal with its competitors?

22 Yes ____ ("Yes" is a finding for GSK.)

23 No ____ ("No" is a finding for Abbott.)

1 A.3.b. unlawful bundled discounting?

2 Yes ("Yes" is a finding for GSK.)

3 No ("No" is a finding for Abbott.)

4 If you answered "Yes" to Question A.2., and to Question
5 A.3.a. or A.3.b. or both, proceed to Question A.4.
Otherwise, proceed to Question B.1.

6 A.4. Do you find that Abbott has proved that it had a legitimate
7 business reason for its conduct?

8 Yes ("Yes" is a finding for Abbott.)

9 No ("No" is a finding for GSK.)

10 If you answered "Yes" to this question, proceed to
11 Question B.1. If you answered "No" to this question, proceed
12 to Question A.5.

13 A.5. Do you find that GSK suffered injury to its business or
14 property as a result of Abbott's monopolization of the
15 relevant market, that this monopolization was a material
cause of GSK's injury and that the injury was of the type
that the antitrust laws were intended to prevent?

16 Yes ("Yes" is a finding for GSK.)

17 No ("No" is a finding for Abbott.)

18 Proceed to Question A.6.

19 ATTEMPTED MONOPOLIZATION CLAIM

20 A.6. Did you find in Question A.1. above that GSK has proven a
21 validly defined economic market?

22 Yes ("Yes" is a finding for GSK.)

23 No ("No" is a finding for Abbott.)

24 If you answered "Yes" to this question, then answer
25 Question A.7. If you answered "No" to this question, proceed
26 to Question B.1.

1 A.7. Do you find that Abbott had a specific intent to acquire
2 monopoly power in the relevant market?

3 Yes ____ ("Yes" is a finding for GSK.)

4 No ____ ("No" is a finding for Abbott.)

5 If you answered "Yes" to this question, then answer
6 Question A.8. If you answered "No" to this question, proceed
7 to Question A.12.

8 A.8. Do you find that there was a dangerous probability that
9 Abbott would acquire monopoly power in the relevant market?

10 Yes ____ ("Yes" is a finding for GSK.)

11 No ____ ("No" is a finding for Abbott.)

12 If you answered "Yes" to this question, then answer
13 Question A.9. If you answered "No" to this question, proceed
14 to Question A.12.

15 A.9. Did you find in Question A.3. above that GSK has proved that
16 Abbott engaged in the following types of anticompetitive
17 conduct:

18 A.9.a. a practical refusal to deal with its competitors?

19 Yes ____ ("Yes" is a finding for GSK.)

20 No ____ ("No" is a finding for Abbott.)

21 A.9.b. unlawful bundled discounting?

22 Yes ____ ("Yes" is a finding for GSK.)

23 No ____ ("No" is a finding for Abbott.)

24 If you answered "Yes" to Question A.9.a. or A.9.b. or
25 both, proceed to Question A.10. Otherwise, proceed to
26 Question B.1.

27 A.10. Did you find in Question A.4 above that Abbott has proved
28 that it had a legitimate business reason for its conduct?

29 Yes ____ ("Yes" is a finding for Abbott.)

30 No ____ ("No" is a finding for GSK.)

If you answered "Yes" to this question, then proceed to Question B.1. If you answered "No" to this question, proceed to Question A.11.

A.11. Do you find that GSK suffered injury to its business or property as a result of Abbott's attempted monopolization of the relevant market, that this attempted monopolization was a material cause of GSK's injury and that the injury was of the type that the antitrust laws were intended to prevent?

Yes ("Yes" is a finding for GSK.)

No ("No" is a finding for Abbott.)

Proceed to Question A.12.

A.12. If you answered "Yes" to Question A.5. or A.11. or both, what amount of damages, if any, do you find GSK has proved it suffered in lost profits from the misconduct you found Abbott to have committed?

\$ _____

Proceed to Question B.1.

II. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING CLAIM

B.1. Do you find that Abbott committed an act that showed a lack of good faith and fair dealing, injuring GSK's right to receive the benefits that a reasonable party would have been justified in understanding were included in the license agreement?

Yes ("Yes" is a finding for GSK.)

No ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question B.2. If you answered "No" to this question, proceed to Question C.1.

B.2. Did Abbott engage in grossly negligent conduct when it breached the implied covenant of good faith and fair dealing?

Yes ("Yes" is a finding for GSK.)

No ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question B.3. If you answered "No" to this question, proceed to Question C.1.

B.3. Do you find that Abbott's breach of the implied covenant of good faith and fair dealing was a proximate cause of the injury to GSK's business?

Yes ("Yes" is a finding for GSK.)

No ("No" is a finding for Abbott.)

If you answered "Yes" to this question, then answer Question B.4. If you answered "No" to this question, proceed to Question C.1.

B.4. If you answered "Yes" to Question B.3., what amount of damages, if any, do you find GSK has proved it suffered in lost profits from Abbott's breach of the implied covenant of good faith and fair dealing? Enter the number below, even if you awarded some or all of these damages in Question A.12. above. (The Court will ensure that GSK is not awarded the same damages more than once.)

\$

If you entered a number in this line, answer Question B.5. Otherwise, proceed to Question C.1.

B.5. How much of the damages you found in Question B.4., if any, were NOT awarded in Question A.12. above?

\$

Proceed to Question C.1.

III. UNFAIR & DECEPTIVE TRADE PRACTICES CLAIM

C.1. Are any of the following true?

C.1.a. During the negotiation of the Norvir Boosting License, Abbott was considering how to use its control over Norvir to limit competition with Kaletra from competitors' drugs and deliberately withheld this from GSK.

Yes ("Yes" is a finding for GSK.)

No ("No" is a finding for Abbott.)

1 C.1.b. Abbott inequitably asserted its power over Norvir by
2 increasing Norvir's price by 400 percent to disrupt
3 Lexiva's launch or undermine Lexiva's future sales or
both.

4 Yes ("Yes" is a finding for GSK.)

5 No ("No" is a finding for Abbott.)

6 C.1.c. Abbott timed the 400 percent Norvir price increase in
7 order to disrupt Lexiva's launch or undermine Lexiva's
future sales or both.

8 Yes ("Yes" is a finding for GSK.)

9 No ("No" is a finding for Abbott.)

10 If you answered "Yes" to Question C.1.a., C.1.b., or C.1.c.,
11 or to more than one of them, then answer Question C.2. If
12 you answered "No" to Questions C.1.a., C.1.b., and C.1.c.,
13 please have your presiding juror sign, date and return your
verdict.

14 C.2. Do you find that the conduct you found in Question C.1. that
15 Abbott engaged in was a proximate cause of injury to GSK?

16 Yes ("Yes" is a finding for GSK.)

17 No ("No" is a finding for Abbott.)

18 If you answered "Yes" to this question, then answer
19 Question C.3. If you answered "No" to this question, please
have your presiding juror sign, date and return your verdict.

20 C.3. If you answered "Yes" to Question C.2, what amount of
21 damages, if any, do you find GSK has proved it suffered in
22 lost profits from the conduct you found in Question C.1.? Enter
23 the number below, even if some or all of these damages
are the same damages that you awarded in Question A.12. or
B.5. above. (The Court will ensure that GSK is not awarded
the same damages more than once.)

25 \$

26 If you entered a number in this line, answer Question C.4.
27 Otherwise, please have your presiding juror sign, date and
return your verdict.

1
2 C.4. How much of the damages you found in Question C.3., if any,
3 were NOT awarded in Question A.12. or B.5. above?
4 \$ _____
5

6 Please have the presiding juror sign, date and return this form.
7
8

9
10 Signed: _____ Date: _____
11 Presiding Juror
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28